

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

MICHAEL AMARAL,

Plaintiff

PENN MARITIME, INC.,

Defendant

CIVIL ACTION NO.:

04 - 11778 GAO

PLAINTIFFS COMPLAINT AND DEMAND FOR JURY TRIAL**INTRODUCTION****MAGISTRATE JUDGE** *Collings*

This is an action to recover damages for personal injuries arising out of an incident involving Michael Amaral, a Jones Act seaman injured on the Tugboat, Penn 2 ("the Penn 2") on or about January 15, 2003. The Plaintiff is a Jones Act Seaman who suffered severe and permanently disabling injuries due to the unsafe condition of the vessel. He was transported to the Sisters of Charity Medical Center on St. Vincent's Campus in Staten Island, New York following the incident. Since the accident, the Plaintiff has received extensive and ongoing medical treatment. The Plaintiff now has a permanent disability.

JURISDICTION

1. This Court has subject matter jurisdiction over this action pursuant to The Merchant Marine Act of 1920, ["the Jones Act"], 46 U.S.C. §688 *et seq.*
2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. ' 1331, 28 U.S.C. §1332, and 28 U.S.C. §1333.

PARTIES

3. The Plaintiff, Michael Amaral, is a citizen of the United States, residing in Acushnet, in the Commonwealth of Massachusetts, and a seaman.
4. At all times material hereto, Michael Amaral was a permanent employee of Penn Maritime, Inc.
5. At all times material hereto, Michael Amaral was a crew member of the Penn 2, a ship whose port of registry was Stamford, Connecticut.
6. Michael Amaral was born on November 9, 1957.
7. Michael Amaral is domiciled currently in Acushnet, Bristol County, Massachusetts.
8. Based upon information and belief, the Defendant, Penn Maritime, Inc. ("Penn Maritime") is a corporation with its principal office at 1435 Richmond Terrace, Staten Island, NY 10310.
9. At all times relevant hereto, Penn Maritime was the owner of the Penn 2, a tug boat.

10. Penn Maritime was the registered owner of the Penn 2 in January 2003.
11. Penn Maritime placed Plaintiff aboard the Penn 2 to work on the tug.

FACTS

12. The Plaintiff repeats and re-alleges the allegations set forth in Paragraphs 1-11.
13. In or about January 2003, Penn Maritime placed Michael Amaral on the crew of the Tug Boat, the Penn 2.
14. In or about January 15, 2003, Plaintiff fell from a ladder while working on the Penn 2 in New Jersey.
15. Mr. Amaral was transported to the Sisters of Charity Medical Center on St. Vincent's Campus in Staten Island, New York.
16. As a result of the accident, Mr. Amaral has undergone significant medical treatment at various medical facilities since his injury.
17. Mr. Amaral underwent various emergency treatments, medical procedures, physical therapy sessions, medication regimens and a work hardening program as a result of his injury.
18. Mr. Amaral is currently under treatment and care of medical care providers in Massachusetts.

CLAIMS

COUNT I

MICHAEL AMARAL v. PENN MARITIME, INC. (JONES ACT NEGLIGENCE)

19. The Plaintiff repeats and re-alleges the allegations set forth in Paragraphs 1-18.
20. At all relevant times Penn Maritime owned, operated, directed, and/or otherwise controlled the Penn 2.
21. On or about January 15, 2003, Michael Amaral was working as a seaman and member of the crew of the Penn 2.
22. On or about January 15, 2003, while Michael Amaral was in the exercise of due care, in the performance of his duties, he sustained personal injuries, when, due to the unsafe conditions of the tug boat, he was caused to fall from a ladder.
23. The injuries that Michael Amaral sustained as a result of the accident were not caused by any negligence on his part, but were caused by the negligence of the Defendant, Penn Maritime, its agents, servants, and/or employees, including, but not limited to the following:
 - A. Failure to use due care to provide and maintain a seaworthy vessel, appurtenances and proper appliances;

- B. Failure to use due care to make reasonable and periodic inspections of said vessel, appurtenances, equipment, and appliances;
 - C. Failure to use due care to furnish the Plaintiff, Michael Amaral, with a reasonably safe place in which to perform his work;
 - D. Failure and negligence of fellow employees; and
 - E. Failure and negligence in other respects as demonstrated at trial.
24. As a direct and proximate result of Penn Maritime's negligence, the Plaintiff, Michael Amaral, suffered severe and painful injuries that resulted in his permanent condition and disability; he has lost time from his usual pursuits; he has incurred substantial expenses for his medical treatment and care; and he has been otherwise damaged.
25. The injuries Michael Amaral sustained as a result of the accident were proximately caused by the negligence of the Defendant by their failure to provide a safe work place and a seaworthy vessel.

COUNT II
MICHAEL AMARAL v. PENN MARITIME, INC.
(GENERAL MARITIME LAW FOR UNSEAWORTHINESS)

26. The Plaintiff repeats and re-alleges the allegations set forth in Paragraphs 1-25.
27. On or about January 15, 2003, Michael Amaral was working as a seaman and member of the crew of the Penn 2.
28. On or about January 15, 2003, while Michael Amaral was in the exercise of due care, in the performance of his duties, he sustained personal injuries, when, due to the unsafe conditions of the tug boat, he was caused to fall from a ladder.
29. The injuries Michael Amaral sustained were due to no fault of his own, but were proximately caused by the unseaworthiness of the Defendant's vessel.
30. As a result of said injuries, the Plaintiff has suffered severe and painful injuries that have resulted in a permanent condition and disability, and that have caused the Plaintiff to lose wages, to incur medical bills and hospital expenses, and to suffer other additional damages, likely to continue in the future, that Plaintiff will show at trial.
31. The injuries Michael Amaral sustained as a result of the accident were proximately caused by the negligence of the Defendants by their failure to provide a safe work place and a seaworthy vessel.

COUNT III
MICHAEL AMARAL v. PENN MARITIME, INC.
(GENERAL MARITIME NEGLIGENCE)

32. The Plaintiff repeats and re-alleges the allegations set forth in Paragraphs 1-31.
33. On or about January 15, 2003, Michael Amaral was working as a seaman and member of the crew of the Penn 2.

34. On or about January 15, 2003, while Michael Amaral was in the exercise of due care, in the performance of his duties, he sustained personal injuries, when, due to the unsafe conditions of the vessel, he was caused to fall from a ladder.
35. The injuries Michael Amaral sustained were due to no fault of his own, but were proximately caused by the unseaworthiness of the Defendant's vessel.
36. On or about January 15, 2003, the Defendant, Penn Maritime, negligently and carelessly operated and maintained its vessel, thereby proximately causing severe and permanently disabling injuries to Michael Amaral.
37. As a direct and proximate result of Penn Maritime's negligence, Michael Amaral result of said injuries, the Plaintiff has suffered severe and painful injuries that have resulted in a permanent condition and disability, and that have caused the Plaintiff to lose wages, to incur medical bills and hospital expenses, and to suffer other additional damages, likely to continue in the future, that Plaintiff will show at trial.
38. The injuries Michael Amaral sustained as a result of the accident were proximately caused by the negligence of the Defendant by their failure to provide a safe work place and a seaworthy vessel.

WHEREFORE, the Plaintiff, Michael Amaral, demands judgment against the Defendant in the amount of \$1,000,000.00 together with interest, costs, and attorney's fees, and such other relief as this Court deems mete and just.

PURSUANT TO 28 U.S.C. §1873, PLAINTIFF DEMANDS A TRIAL BY JURY
ON ALL ISSUES CONTAINED IN THIS COMPLAINT.

Michael Amaral,
By his attorney



John E. Sutherland, BBO# 488960
BRICKLEY, SEARS & SORETT, P.A.
75 Federal Street
Boston, MA 02110
(617) 542-0896

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CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Michael Amaral

DEFENDANTS

Penn Maritime, Inc.

(b) County of Residence of First Listed Plaintiff Bristol
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

John E. Sutherland
Brickley, Sears & Sorett
75 Federal St., Boston, MA 02110
(617) 542-0896

Attorneys (If Known)

04 - 11778 GAO

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☒ 1 DEF ☐ 1 Incorporated or Principal Place of Business in This State ☐ 4 DEF ☐ 4
- Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business in Another State ☐ 5 ☐ 5
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input checked="" type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury -- Med. Malpractice <input type="checkbox"/> 365 Personal Injury -- Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor Mgmt. Relations <input type="checkbox"/> 730 Labor Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIW C/DIW W (405(g)) <input type="checkbox"/> 864 SSD Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS -- Third Party 26 USC 7609	

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

(Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Jones act, unseaworthy vessel + general maritime negligence for injury to tugboat crewmen.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ 1,000,000

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDG
F

DOCKET NUMBER

DATE 8/13/04

SIGNATURE OF ATTORNEY OF RECORD

John E. Sutherland

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Michael Amoral v Penn Maritime, Inc.
-
2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).
- ☐ I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- ☐ II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- ☒ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.
3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.
-
4. Has a prior action between the same parties and based on the same claim ever been filed in this court?
- YES ☒ NO ☐
5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)
- YES ☐ NO ☒
- If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?
- YES ☐ NO ☐
6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?
- YES ☐ NO ☒
7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).
- YES ☐ NO ☒
- A. If yes, in which division do all of the non-governmental parties reside?
- Eastern Division ☐ Central Division ☐ Western Division ☐
- B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?
- Eastern Division ☒ Central Division ☐ Western Division ☐
8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)
- YES ☐ NO ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME John E. Sutherland

ADDRESS Brickley, Sears & Savett, 75 Federal St., Boston MA 02110

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